

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF WEST VIRGINIA**

SCOTT T. BALLOCK,

Plaintiff,

v.

**CIVIL ACTION NO.: 1:17-CV-52
Honorable Irene M. Keeley**

**ELLEN RUTH COSTLOW,
STATE TROOPER MICHAEL KIEF,
STATE TROOPER RONNIE M.
GASKINS, AND STATE TROOPER
CHRIS BERRY,**

Defendants.

**DEFENDANTS STATE TROOPER MICHAEL KIEF, STATE TROOPER
RONNIE M. GASKINS, AND STATE TROOPER CHRIS BERRY'S
MOTION TO VACATE ORDER OF REFERRAL**

Defendants State Trooper Michael Kief, State Trooper Ronnie M. Gaskins, and State Trooper Chris Berry (collectively, the “State Police Defendants”) move the Court to vacate the Order referring this action to the United States Magistrate Judge (ECF No. 5).

This action was referred to Magistrate Judge Aloï on April 6, 2017, upon Plaintiff filing the original Complaint. Order of Referral (ECF No. 5). The Order of Referral cites to Local Rule of Civil Procedure 72.01, which provides in pertinent part that “[a]ctions filed by persons who are proceeding *pro se*, whether or not they are in custody” are routinely referred to a magistrate judge “until such person is represented by retained counsel.” L.R. Civ. P. 72.01(d)(6).

Although Mr. Ballock was *pro se* at the time he filed the original Complaint in this matter, he is now represented by counsel. Notice of Appearance of Pl.’s Counsel, July 6, 2017 (ECF No. 20). Consequently, the apparent reasoning for referring this matter to the Magistrate Judge no longer applies.

Additionally, the parties have not consented to have this case tried by a Magistrate Judge. Report of the Parties' Planning Meeting ¶ 5c (ECF No. 35). Therefore, any reports and recommendations on dispositive motions will necessarily have to be reviewed by the District Court Judge *de novo*, because regardless of the Magistrate Judge's decision, the losing party will almost certainly object to the report and recommendation. 28 U.S.C. § 636(b)(1)(B). It would therefore serve the interests of judicial efficiency, as well as the parties' time and resources, to have the District Court Judge decide the issue in the first place.

For all the foregoing reasons, Defendants State Trooper Michael Kief, State Trooper Ronnie M. Gaskins, and State Trooper Chris Berry respectfully request that the Court GRANT their Motion and enter an Order vacating the previous Order, which referred this case to the United States Magistrate Court Judge.

Dated this 8th day of June 2018.

Respectfully submitted,

/s/ Mark G. Jeffries

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Gaskins, and State Trooper Chris Berry*

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CHRIS BERRY,

Defendants.

CERTIFICATE OF SERVICE

I hereby certify that, on the 8th day of June 2018, I filed the foregoing “*Defendants State Trooper Michael Kief, State Trooper Ronnie M. Gaskins, and State Trooper Chris Berry’s Motion to Vacate Order of Referral*” with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to the following:

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